


241374

ZERO
Tolerance

WEST KY. DRUG & ALCOHOL SCREEN INC.

1700 KY. AVE. STE. 114
PADUCAH, KY. 42001
PH. 270-575-9823
FX. 270-575-9824DEPT. OF TRANSPORTATION
DOCKETS

2003 APR 25 P 12:43

ZERO
Tolerance

April 23, 2003

Docket Management Facility
(USCG-2001-8773) - 15
U.S. Department of Transportation
Room PL-401
400 Seventh Street SW
Washington, DC 20590-0001Re: Marine Casualties and Investigations; Chemical Testing Following Serious
Marine Incidents - (USCG-2001-8773) RIN 2115-AG07

Notice of Proposed Rulemaking

To Docket Management Facility Staff:

This letter is in response to the Federal Register, Vol. 68, No. 40, Friday, February 28, 2003, Proposed Rules DOT Coast guard **46 CFR Part 4** Notice of Proposed Rulemaking for Chemical Testing Following Serious Marine Incidents.

West Kentucky Drug and Alcohol Screen, Inc. is a four employee business based in Paducah, Kentucky, a major hub on the Nation's Inland Waterway System. We specialize in onboard, random, reasonable suspicion/cause and post accident, on in office pre-employment screens relative to **46 CFR Part 4**. We do this currently for fifteen inland river towing/fleeting companies encompassing a total fleet size in excess of 500 vessels. These vessels have manning sizes of normally three (fleet boat,) seven (medium line-haul boat,) or ten (regular line-haul boat) crewmembers, depending on size and planned work routine. Our service focuses on compliance with 46 CFR Part 4 in supporting these company's and the U.S. Coast Guard's efforts in assuring a Drug Free Work Place on the Brown Water environs of the United States.

In considering the above captioned NPR, West Kentucky Drug and Alcohol Screen, respectfully wishes to call attention to several points that would be detrimental to the proper handling of a SMI pursuant to compliance if this rule becomes policy.

Background, Purpose, Geography, and Time

The current regulations in 46 CFR Part 4 do require marine employers to take all practicable steps after a SMI to ensure that testing is completed for alcohol and dangerous drugs, but without a specific time requirement. At the same time, Public Law 105-383 section 2303a-"Post serious marine casualty alcohol testing" does require the Coast

Guard to establish procedures insuring that after a SMI, alcohol testing is conducted not later than two hours after the casualty occurred. We support this requirement for the following reasons:

1. Section 2303a requires the alcohol testing to be conducted as soon thereafter as the safety concerns of the SMI have been neutralized.
2. Rarely are merchant mariners working on a vessel engaged in commerce on the Nation's Inland Waterways not accessible to the network of qualified Breath Alcohol Technicians (BAT,) Screen Test Technicians (STT) and Professional Collector responders or a qualified medical facility within two hours of their location at any given time. Therefore, the employer, charged with the responsibility of accomplishing the required procedures within the two hour of a SMI, has the resources available around the clock.
3. If alcohol testing is not completed within two hours based on the exception in Section 2303a, it is to be noted and explained on Casualty Report Form CG-2692. An additional explanation would be required when testing is not completed within the eight-hour timeframe, also specified in 2303a. We also support the proposed provision requiring "drug testing be conducted as soon as possible after a SMI but no later than 32 hours after the occurrence."
4. Modern technology, which most of us take for granted, allows employers and responders almost instant communication ability to affect a timely response to a SMI anywhere on the inland river system.

Responsibility of Individuals Directly Involved in Serious Marine Incidents

We support amending Sec. 4.06-5, "so that individuals subject to alcohol testing after a SMI would be prohibited from consuming alcoholic beverages for eight hours following the SMI, or until after the required alcohol testing is completed.

We reject adding Sec. 4.06-15 for the following reasons:

1. Under 49 CFR Part 40, the employer already is mandated to provide screening devices that identify Blood Alcohol Concentrations Greater Than 0.02%. These are in the required post accident testing kits "to be administered by a BAT, STT, Professional Collector, or medical professional."
2. According the Proposed rule, the marine employer must have sufficient devices capable of determining the presence of alcohol in an individual's system onboard the vessel for use to meet the alcohol testing requirements found under 4.06-3. The concern arising from the term sufficient devices is that all of the approved, disposable, saliva-based, and breath alcohol devices that are listed on the National Highway Traffic Safety Administration (NHTSA) Conforming Products List (CPL) have inherent faults and difficulties in providing consistently accurate alcohol test results. Said devices have specific storage temperature ranges and expiration dates. One cannot guarantee a consistent storage temperature range on a towboat due to its physical make up and unpredictable mechanical performance or even scheduled down time. Some screening devices listed on the CPL, such as disposable breath alcohol tubes which use a change in

the color of crystals to indicate a BAC above 0.02%, have similar issues of storage temperatures and are not approved by NHTSA for usage with sodium vapor lighting found on towboats. In the real environment of a towboat, no matter what configuration, it is unrealistic to assume these screening devices could be purchased, stored, and administered in accordance with the manufacturer guidelines, and the NHTSA requirements to produce defensible valid alcohol results. For this these devices are "screening devices" only are to be utilized in conjunction with Evidential Breath Alcohol Testing (EBT) devices. This is in accordance with DOT 49 CFR Part 40. The DOT has gone to great lengths in 49 CFR Part 40 to ensure the proper use of alcohol screen devices (ASD) in conjunction with a confirmation alcohol test by EBT's administered by a BAT, STT, or qualified medical professional.

3. The proposed rule requires the employer to provide sufficient screening devices, but it neglects to identify who is to obtain the sample and interpret the result. It is unrealistic to assume a controlled environment on a towboat in which this can be guaranteed. For example: A fleet boat with three individuals is faced up to a chemical barge that experiences a SMI and all three are overcome with fumes. The wind changes allowing response from a near by vessel affecting the rescue/first aid and mitigation of the dangerous situation. The crew is transported to the nearest medical facility for diagnosis, treatment, and required alcohol and drug testing. Who on the stricken vessel would have administered the test in the Proposed Rule?

4. Beyond proper response to a SMI, any licensed crew member's professional career is uselessly placed at risk by the Proposed Rule. Commonly used mouthwashes often have an alcohol base in the product. A serious marine incident occurring immediately after a licensed individual assumes watch would subject this person to questionable alcohol test results. Proper storage requirements, proper lighting conditions, proper timing, and current testing devices cannot be guaranteed. A false positive from this situation would not only cause serious disciplinary action by his/her employer, but it would also subject the individual to disciplinary action from the United States Coast Guard. The license and livelihood could be lost. In this scenario, the individual does not have the same protocol as individuals employed in other modes of transportation governed by DOT.

Sec. 4.06-3 (ii) "If the safety concerns directly related to the SMI prevented the alcohol testing from being conducted within 2 hours of the occurrence of the incident, the alcohol testing must be conducted as soon as the safety concerns are addressed."

Considering the geography and nature of inland river transportation we support this proposed section. Once safety concerns are addressed and stabilized the crew members to be tested would be transported to the appropriate facility or the qualified tester from the regional network would be permitted to board the stricken vessel in a timely manner. However, it should be realized that "safe ground transportation" could be affected by natural phenomena such as fog or even an ice storm which could restrict ground transportation. Such safety concerns directly impact the proper response to the SMI.

Public Meeting:

In summary, we urge the U. S. Coast Guard to hold several appropriate regional public meetings to exchange ideas and discuss implementation of the proposed rule for the following reasons:

1. It should be stipulated the crew members of inland river towboats and fleet boats are not hired to conduct post SMI alcohol and drug screening. They are hired to move the nation's commerce in a safe, cost efficient, environmentally sound mode.
2. Should the proposed rule pass, it is felt the proposed 180 day implementation be extended to one year to allow ample time for employers to accomplish the costly task of procuring and training their marine associates in the proper use of the equipment.
3. Should the proposed rule pass, its economic impact on the network of **Small Businesses, such as West Kentucky Drug and Alcohol Screen Specialist** should be assessed. We, the vendors who serve the inland marine industry by providing quality compliance to 49 CFR part 40, could potentially be driven out of business, thereby negating the original purpose of compliance.

Should you have any questions regarding the above, feel free to contact me at 1-270-575-9823.

Sincerely,



Homer H. Holmes
President and Owner

JC/jc